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NOTE CHANGES MADE BY THE COURT

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26

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28 FOODS, INC.*

12 [Additional Counsel on Signature Page]

13
14 **UNITED STATES DISTRICT COURT**
15
16 **CENTRAL DISTRICT OF CALIFORNIA**
17
18 **WESTERN DIVISION**

19
20 IN RE CONAGRA FOODS, INC.

21
22 } Case No. CV 11-05379-MMM (AGRx)
23 } MDL NO. 2291

24
25 **STIPULATION AND [PROPOSED] PROTECTIVE ORDER**
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27 Honorable Margaret M. Morrow, United
28 States District Judge

19 Honorable Alicia G. Rosenberg, United
20 States Magistrate Judge

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NOTE CHANGES MADE BY THE COURT

1 IT IS STIPULATED, AGREED, AND JOINTLY REQUESTED by Plaintiffs
2 ("Plaintiffs") and Defendant ConAgra Foods, Inc. ("Defendant") (collectively, the
3 "Parties"), by and through their respective counsel, that a protective order should be
4 entered according to the following terms and provisions ("Protective Order")
5 pursuant to Federal Rule of Civil Procedure 26(c):

6 **GOOD CAUSE STATEMENT**

7 The prosecution and defense of these actions may require the discovery or
8 disclosure of documents, information or other material claimed by one or more of
9 the Parties or third parties to be non-public personal financial or other confidential
10 information, information protected from disclosure by the privacy rights that attach
11 to trade secrets, and/or information otherwise properly regarded by one or more of
12 the Parties as private, sensitive, proprietary, financial, and/or confidential for which
13 special protection from public disclosure and from use for any purpose other than
14 prosecution of this action is warranted. This action may also involve other valuable
15 research, development, commercial, and/or technical information for which special
16 protection from public disclosure and from use for any purpose other than
17 prosecution of this action is also warranted.

18 Accordingly, to expedite the flow of information, to facilitate the prompt
19 resolution of disputes over confidentiality of discovery materials, to adequately
20 protect information the Parties are entitled to keep confidential, to ensure that the
21 parties are permitted reasonably necessary uses of such materials in preparation for
22 and in the conduct of trial, to address their handling at the end of the litigation, and
23 serve the ends of justice, a protective order for such information is useful and
24 justified in this matter. It is the intent of the Parties and the Court that information
25 will not be designated as confidential for tactical reasons in this case and that nothing
26 be so designated without a good faith belief that there is good cause why it should
27 not be part of the public record of this case. Further, the scope and effect of this
28 Protective Order is governed by the Local Rules and this Court's Standing Order and

1 procedures, and thus does not govern court proceedings in the trial in any of the
2 Actions. This Protective Order is thus entered into for good cause shown.

3 **DEFINITIONS**

4 1. "Matter" means the matters consolidated under the caption *In re: ConAgra Foods, Inc.*, currently pending in the Central District of California, Case
5 No. 11-cv-05379-MMM (AGRx).

6 2. "Confidential Information" means information (a) which is produced to
7 a Party to the Matter pursuant to any discovery method allowed under statute, rule,
8 or case law; and (b) which is designated and marked as CONFIDENTIAL pursuant
9 to Paragraphs 4 and 5 below. Confidential Information shall not include any
10 information:

11 (a) which is publicly available;
12 (b) which is already in the possession of the Receiving Party (as
13 defined below), provided that the source of the information was not bound by a
14 contractual, legal, or fiduciary obligation of confidentiality; or
15 (c) which the Receiving Party obtains from a source other than the
16 Designating Party or Producing Party (as defined below), provided that the source
17 of the information was not bound by a contractual, legal, or fiduciary obligation of
18 confidentiality.

19 3. "Qualified Person" means anyone who agrees to be bound by the terms
20 of this Protective Order and who also falls into one of the following categories:

21 (a) Attorney of record for the Parties, or a member, associate,
22 paralegal or employee of the firm where such attorney practices, or an employee of
23 an independent photocopying or litigation support service utilized by such attorney
24 in the Matter;
25 (b) In-house counsel or designated legal personnel for the Parties;

11 (d) Any person indicated on the face of the document as having
12 written or received such document during the course of his or her employment or
13 consultancy, or a custodian or other person who otherwise possessed or knew the
14 information: [redacted]

(e) Outside consultants, technical advisors, and expert witnesses (whether designated as trial witnesses or not), and together with their respective assistants and clerical staff, who are actively engaged in assisting the counsel described in Subparagraphs (a) and (b) in this Action, provided: (1) they are not currently employed by, or performing non-litigation consulting for, any manufacturer of any branded or private label cooking oil, where their employment

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the sales, marketing or formulation of
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or consulting duties relate to cooking oils; and (2) they have first been supplied with
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and have read a copy of this Protective Order and have executed an undertaking in
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the form attached as Exhibit 1 hereto;

4 **Plaintiffs' Proposal:**

5 (f) During their depositions, witnesses in the action to whom
6 disclosure is reasonably necessary, provided (1) the Deposing Party requests that the
7 any Confidential information unless they sign an undertaking in the form attached
8 as Exhibit 1 hereto, or otherwise agreed by the Designating Party or ordered by the
9 court.

witness sign the form attached as
Exhibit 1 hereto; and (2)

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 (g) Stenograph reporter involved in any deposition, hearing, trial or
17 other proceeding in this Matter

18 (h) Officers of this Court and their supporting personnel or officers
19 of any appellate court to which any appeal may be taken or in which review is
20 sought;

21 [REDACTED]
22 (i) Mock trial participants provided they have executed an
23 undertaking in the form attached as Exhibit 1 hereto, and are not permitted to retain
24 any Confidential materials.

25 The Receiving Party may seek the Designating Party's consent to disclose
26 Confidential information to an outside consultant, technical advisor, or expert
27 witness who does not satisfy the requirements of section 3(e)(1).
28 [REDACTED]

Designating Party will not unreasonably withhold consent. If the parties cannot resolve their dispute informally, the Requesting Party may seek relief from the court.

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3 (i) or (j) Any mediator(s) or settlement officer(s) mutually agreed
4 upon by the Parties and their supporting personnel.

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AGREEMENT

6 4. A Party may designate as "Confidential" (the "Designating Party")
7 those materials, whether in written, oral, electronic, graphic, audiovisual or any other
8 form, which that Designating Party in good faith believes contains information
9 entitled to confidential treatment under applicable law, including Fed. R. Civ. P. 26
10 and case law interpreting same.

11 5. Any party who produces Confidential Information (the "Producing
12 Party") must mark materials produced or exchanged during discovery that are
13 designated as "Confidential" by the Designating Party, by legibly marking the
14 legend "CONFIDENTIAL" on each page of materials designated as Confidential
15 and by marking the legend "CONFIDENTIAL" on non-paginated physical media
16 (such as discs or drives) and by such other methods as agreed between the Parties as
17 to electronic non-paginated material. By agreeing to this Protective Order, no party
18 waives the right to challenge any other party's designation of any document as
19 "Confidential."

20 For testimony given in deposition, the Party or non-party offering or
21 sponsoring the testimony, or its Counsel, shall identify on the record, before the close
22 of the deposition, all protected testimony, and further specify any portions of the
23 testimony that qualify as "Confidential." When it is impractical to identify
24 separately each portion of testimony that is entitled to protection, and when it
25 appears that substantial portions of the testimony may qualify for protection, the
26 Party or non-party that sponsors, offers, or gives the testimony may invoke on the
27 record (before the deposition is concluded) a right to have up to 20 days to identify
28 the specific portions of the testimony as to which protection is sought. Portions of

1 the testimony that are appropriately designated for protection within the 20 days
2 shall be covered by the provisions of this Protective Order.

3 6. Confidential Information shall be used by a Party who receives the
4 information (the "Receiving Party") solely for the purposes of this Matter, including
5 discovery, pleadings, motions, briefs, potential settlement, and preparation for the
6 trial or hearing in this Matter and on appeal, if any, and for no other purpose.

7 7. Confidential Information may be disclosed only to a Qualified Person
8 unless otherwise expressly provided in this Protective Order, or otherwise agreed to
9 in writing between the Designating Party and the Party wishing to disclose the
10 Confidential Information.

11 8. Confidential Information may be disclosed to a Qualified Person if, in
12 the good faith judgment of the disclosing person, the person receiving the
13 Confidential Information has a reasonable need to access such information for the
14 purpose of assisting any attorney of record in the Matter.

15 9. Without written permission from the Designating Party or a court order
16 secured after appropriate notice to all interested persons, a Receiving Party may not
17 file in the public record in this action any Confidential Information. All transcripts,
18 depositions, exhibits, and other documents and things filed or received with the
19 Court containing Confidential Information, or any pleading purporting to reproduce
20 or paraphrase such information, shall be filed in compliance with Civil Local Rules
21 5.2 and 79-5, in sealed envelopes or other appropriate sealed containers on which
22 shall be endorsed the caption of the Matter, with a description of the contents of such
23 sealed envelope or container, and the legend "Confidential." Any party submitting
24 any Confidential Information to the Court shall request that the Court maintain such
25 Confidential Information under seal; provided, however, that the Designating Party
26 shall bear the burden of defending such designation if challenged. If a request to file
27 Confidential Information under seal is denied by the Court, then the Receiving Party
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1 may file the information in the public record unless otherwise instructed by the
2 Court.

3 10. Any person making, or causing to be made, copies of any Confidential
4 Information shall make certain that each copy bears the legend "Confidential" on
5 each page or on the non-paginated physical media (such as discs or drives) or by
6 such other methods as agreed between the Parties as to electronic non-paginated
7 material.

8 11. Each Party shall, at the election of the Receiving Party, destroy or return
9 to the Producing Party all Confidential Information, including any copies thereof,
10 and shall confirm in writing that all the Confidential Information, including copies
11 thereof in the Receiving Party's possession, custody, or control, has been returned
12 or destroyed within thirty (30) days after the case being resolved by final judgment,
13 appeal, settlement, some combination thereof, or otherwise. However, the attorney
14 of record and in-house counsel for the Parties (including the firm where such
15 attorney practices) may retain Confidential Information contained within the
16 attorney's business records relating to this Matter, provided the Confidential
17 Information is maintained in a confidential manner.

18 12. Neither of the Parties, no Qualified Person, nor any other entity (other
19 than the Designating Party or the attorneys identified in Paragraph 11 above), shall
20 retain copies of the Confidential Information, including any copies thereof, or
21 referenced thereto, after the time specified in Paragraph 11 herein or as otherwise
22 provided by paragraph 11. Any exceptions to this Paragraph shall be in writing by
23 a duly authorized representative of the Designating Party.

24 13. The inadvertent or unintentional disclosure by the Producing Party of
25 Confidential Information, regardless of whether the information was so designated
26 at the time of disclosure, shall not be deemed a waiver in whole or in part of a
27 Designating Party's claim of confidentiality, either as to the specific information
28 disclosed or as to any other information relating thereto on the same or related

1 subject matter. Any such inadvertently or unintentionally disclosed Confidential
2 Information not designated as such pursuant to Paragraph 4 and 5 shall be so
3 designated by giving written notice to all Parties as soon as reasonably possible after
4 the Producing Party becomes aware of the inadvertent or unintentional disclosures.
5 Upon such notice, and upon receipt of substitute copies bearing the appropriate
6 confidentiality legend, the Receiving Party shall destroy or return said documents
7 and things and not retain copies thereof, and shall thereafter treat information
8 contained in said documents and any summaries and notes thereof as Confidential
9 Information.

10 14. Any Party or non-party (the "Challenging Party") may challenge a
11 designation of confidentiality at any time. In the event that any Party objects to the
12 designation of any document or information as Confidential Information, the
13 Challenging Party shall provide written notice of the objection to the Designating
14 Party, specifying that the challenge is being made in accordance with this specific
15 paragraph of the Protective Order and identifying the grounds for the objection as to
16 each portion of the materials that are the subject of the objection. The Designating
17 Party will have ten business days to respond in writing. The Parties shall confer
18 directly (in voice-to-voice dialogue) in good faith in an effort to resolve the objection
19 within ten days of the Designating Party's written response pursuant to the procedure
20 set forth in Local Rule 37-1. In conferring, the Challenging Party must explain the
21 basis for its belief that the confidentiality designation was not proper and must give
22 the designating party an opportunity to review the designated material, to reconsider
23 the circumstances, and, if no change in designation is offered, to explain the basis
24 for the chosen designation. If the dispute cannot be resolved, the Parties shall next
25 follow the procedures set forth in Local Rule 37-2 for preparing the Joint Stipulation.
26 With respect to timing of those procedures and without modifying Local Rule 37-2,
27 the Designating Party shall personally deliver, e-mail or fax its portion of the Joint
28 Stipulation to counsel for the Challenging Party within seven days of the conclusion

1 of the above meet and confer. The Challenging Party then has seven days from
2 receipt to personally deliver, e-mail or fax its portion of the Joint Stipulation to the
3 Designating Party. The Designating Party shall then serve the complete Joint
4 Stipulation to the Challenging Party for signature no later than the end of the next
5 business day after receipt of the Challenging Party's portion. The Challenging Party
6 has one business day to sign the Joint Stipulation, and the Designating Party must
7 file the executed Joint Stipulation within two business days after receipt. The
8 Designating Party shall have the burden of proof on any such motion to establish the
9 propriety of its confidentiality designation. If the Parties want to file the Joint
10 Stipulation required by the Local Rule 37 under seal, the parties may file a stipulation
11 to that effect or the party seeking to file the Joint Stipulation under seal may file an
12 ex parte application making the appropriate request. The Parties must set forth good
13 cause in the stipulation or ex parte application as to why the Joint Stipulation or
14 portions thereof should be filed under seal. Frivolous challenges, and those made
15 for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens
16 on other parties) may expose the Challenging Party to sanctions. Similarly, frivolous
17 designations, and those made for an improper purpose (e.g., to harass or impose
18 unnecessary expenses and burdens on other parties) may expose the Designating
19 Party to sanctions. Until resolution by the court of any dispute regarding a
20 confidentiality designation, all parties shall continue to afford the material in
21 question the level of protection to which it is entitled under the Producing Party's
22 designation.

23 15. If a Party is served with a subpoena or a court order issued in other
24 litigation that compels disclosure of any information or items designated in this
25 action as "Confidential," that Party must:

26 (a) promptly notify in writing the Designating Party. Such
27 notification shall include a copy of the subpoena or court order;

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5 (c) cooperate with respect to all reasonable procedures sought to be
6 pursued by the Designating Party whose Confidential Information may be affected.

Plaintiffs' Proposal:

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce ~~any~~^{a witness to testify to} information designated in this action as "Confidential" before the due date, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 16. The terms of this Protective Order are applicable to information
25 produced by a non-party in this action and designated ^{by the non-party} as "Confidential." Such
26 information produced by non-parties in connection with this litigation is protected
27 by the remedies and relief provided by this Protective Order. Nothing in these
28 provisions should be construed as prohibiting a non-party from seeking additional

1 protections. In the event that a Party is required, by a valid discovery request, to
2 produce a non-party's Confidential Information in its possession, custody, or
3 control, and the Party is subject to an agreement with the non-party not to produce
4 the non-party's confidential information, then the Party shall:

5 (a) promptly notify in writing the requesting Party and the non-party
6 that some or all of the information requested is subject to a confidentiality agreement
7 with a non-party;

8 (b) promptly provide the non-party with a copy of the Protective
9 Order in this litigation, the relevant discovery request(s), and a reasonably specific
10 description of the information requested that the party believes is confidential; and

11 (c) make the information requested available for inspection by the
12 non-party.

13 [REDACTED]

14 If the non-party fails to seek a protective order from the appropriate court
15 within 14 days of receiving the notice and accompanying information, the Party may
16 produce the non-party's confidential information responsive to the discovery
17 request. If the non-party timely seeks a protective order, the Party shall not produce
18 ~~a witness to testify to any information in its possession or control before the due date of the request.²~~
19 Absent a court order to the contrary, the non-party shall bear the burden and expense
20 of seeking protection of its Confidential Information.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

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4 17. If a Receiving Party learns that, by inadvertence or otherwise, it has
5 disclosed Confidential Information to any person or in any circumstance not
6 authorized under this Protective Order, the Receiving Party must immediately (a)
7 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
8 best efforts to retrieve all unauthorized copies of the Confidential Information, (c)
9 inform the person or persons to whom unauthorized disclosures were made of all the
10 terms of this Protective Order, and (d) request such person or persons to execute the
11 attached Exhibit 1.

12 18. The Parties shall meet and confer no later than thirty (30) days prior to
13 the trial date to determine appropriate procedures to propose to the Court for
14 handling Confidential Information during any trial, in accord with all applicable
15 local rules.

16 19. This Order shall not apply to the Parties' trial, if one occurs, nor the
17 handling of information during trial. Before disclosure at trial of materials or
18 information designated "CONFIDENTIAL" any Party may seek further protections
19 against public disclosure from the Court for good cause shown.

20 IT IS SO STIPULATED.

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27 The purpose of this provision is to alert the interested parties to the existence
28 of confidentiality rights of a non-party and to afford the non-party an opportunity
to protect its confidentiality interests.

1 DATED: JUNE 14, 2013
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10 */s/ David E. Azar*
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27 Plaintiffs' *Interim Class Counsel*
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1 DATED: JUNE 14, 2013
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11 Plaintiffs' Interim Class Counsel

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ORDER

The parties having stipulated to the foregoing and good cause appearing, IT IS SO ORDERED.

Dated: June 25, 2013

Alicia L. Rosenberg
Honorable Margaret M. Morrow
United States District Court Judge
Magistrate

EXHIBIT 1

In re: ConAgra Foods, Inc.
Central District of California
Case No. 11-cv-05379-MMM

UNDERTAKING TO ABIDE BY PROTECTIVE ORDER

I, _____ declare that my address is _____

My current employer is _____ and my occupation is _____

9 1. I have received a copy of the Protective Order in the above-captioned
10 action. I have carefully read and understand the provisions of the Protective Order.

11 2. I will comply with all of the provisions of the Protective Order. I will
12 hold in confidence, will not disclose to anyone not qualified under the Protective
13 Order, and will use only for purposes of this action any CONFIDENTIAL
14 INFORMATION that is disclosed to me.

15 3. Promptly upon termination of this action, I will return any
16 CONFIDENTIAL materials that may come into my possession to the outside
17 attorneys representing my employer or the attorneys who furnished those documents
18 to me.

19 4. I hereby submit to the jurisdiction of this Court for the purpose of
20 enforcement of the Protective Order in this action.

21 I declare under penalty of perjury that the foregoing is true and correct.

Dated:

Signature _____
Print Name: _____